The Commonwealth of Massachusetts
Department of Public Utilities
Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston 02202

May 15, 1996

Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Secretary:

Enclosed for filing in the above-captioned matter, please find an original and 16 copies of the Initial Comments of the Commonwealth of Massachusetts Department of Public Utilities. Please note that the Department of Public Utilities has provided a summary of substantive arguments in the Table of Contents on pages i-ii.

Thank you for your assistance in this matter.

Sincerely,

Paul Vasington
Director
Telecommunications Division

cc: Janice Myles, Common Carrier Bureau
International Transcription Services, Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

INITIAL COMMENTS OF THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

The Commonwealth of Massachusetts
Department of Public Utilities

John B. Howe, Chairman
Mary Clark Webster, Commissioner
Janet Gail Besser, Commissioner

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Dated: May 15, 1996

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Pursuant to the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.41, and 1.415 (1995), the Commonwealth of Massachusetts Department of Public Utilities ("MDPU") respectfully submits the following initial comments in response to the Commission's April 19, 1996 "Notice of Proposed Rulemaking" ("NPRM") issued in the above-captioned proceeding.

I. INTEREST OF THE MDPU

The MDPU is the Massachusetts administrative agency with general supervisory jurisdiction and control over telecommunications common carriers offering services within the Commonwealth of Massachusetts, as provided by Massachusetts General Laws c. 159, § 12. The MDPU's address is 100 Cambridge Street, Boston, Massachusetts 02202.

The NPRM is designed to implement the interconnection obligations of the Telecommunications Act of 1996 ("Act"). The Commission stated that the purpose of this proceeding is "to adopt national rules that are designed to secure the full benefits of competition for consumers, with due regard to work already done by the states that is

compatible with the terms and the pro-competitive intent of the 1996 Act." NPRM, ¶ 26. Therefore, the NPRM is clearly important to the development of telecommunications competition in the Commonwealth of Massachusetts

The MDPU intends to carry out the role granted to it by Congress in implementing the local competition and interconnection provisions of the Act fairly and expeditiously. A significant part of that role will be to ensure that interconnection in Massachusetts is implemented consistently with the Commission's regulations pursuant to the Act. Therefore, we have filed these initial comments on the Commission's NPRM in order to assist the Commission in developing those regulations.

Our comments are grouped under three headings: (1) Jurisdiction; (2) Section 251 Rules; and (3) Pricing Principles.

II. DISCUSSION

A. Jurisdiction

1. The Commission has the authority to implement explicit national rules for implementation of § 251 of the Act, but it may not establish pricing principles for the states to apply in carrying out the states' responsibilities in arbitrating agreements.

The Commission identified what the MDPU believes to be the central question in this proceeding: "We need to determine the extent to which [the Commission's] rules should elaborate on the meaning of the statutory requirements set forth in sections 251 and 252." NPRM, ¶ 27. To that end, the Commission stated that it seeks comment on whether it should adopt explicit rules for implementation of § 251 of the Act, or whether it should allow

variability among the states. NPRM, ¶¶ 27-32, 33. It is clear from the NPRM that the Commission is leaning heavily toward the adoption of specific rules.[1] Setting aside for a moment the wisdom of the Commission adopting specific rules for implementation of the interconnection requirements in § 251 of the Act, we believe that it is in the Commission's authority under the Act to do so.

The Commission tentatively concluded that the Act establishes its authority to adopt pricing rules to ensure that rates for interconnection, unbundled network elements, and collocation are just, reasonable, and nondiscriminatory, and to define what are wholesale rates for purposes of resale, and what is meant by reciprocal compensation arrangements for transport and termination of telecommunications. NPRM, ¶ 117. The Commission also stated its belief "that the statute, and in particular [the Commission's] statutory duty to implement the pricing requirements of section 251, as elaborated in section 252, is reasonably read to require that [the Commission] establish pricing principles interpreting and further explaining the provisions of section 252(d) for the states to apply in establishing rates in arbitrations and in reviewing [Bell Operating Company] statements of generally available terms and conditions. Such an approach appears to be consistent with both the language and the goals of the statute."

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[1] "We see many benefits in adopting such rules to implement section 251. Such rules should minimize variations among states in implementing Congress's national telecommunications policy and guide states that have not yet adopted the competitive paradigm of the 1996 Act. Such rules also could expedite the transition to competition, particularly in those states that have not adopted rules allowing local competition, and thereby promote economic growth in state, regional, and national markets." NPRM, ¶ 28.

NPRM, ¶ 118. We strongly disagree with the Commission's belief that the statute can be read to allow, let alone require, the Commission to establish pricing principles for the states to apply in carrying out the states' responsibilities in arbitrating agreements.

In the plain language of the Act, the pricing principles in § 252 of the Act are unequivocally intended to guide states in their determination of the just and reasonable rates for interconnection (including collocation), network elements, reciprocal compensation, and wholesale service offerings.[2] If a party feels aggrieved by a state's determination, that party has recourse to Federal district court for relief. See § 252(e)(6) of the Act. Therefore, it is not appropriate for the Commission to limit or control the various findings that state commissions may make in carrying out their obligations under § 252(d) of the Act.

In summary, the MDPU believes that the Commission has the authority to adopt specific rules for implementation of § 251 of the Act, and, if the Commission adopts such specific rules, we believe states must ensure that arbitrated agreements are in compliance with those rules. However, we strongly disagree with the Commission's belief that this authority extends to the pricing standards in § 252(d) of the Act. If the Commission adopts pricing principles for states to apply in determining just and reasonable rates for interconnection (including collocation), network elements, reciprocal compensation, and wholesale service offerings, we believe that states lawfully may disregard such pricing principles.

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[2] The Joint Explanatory Statement on this point reads: "To the extent that a State establishes the rates for specific provisions of an agreement, it must do so according to new section 252(d)" (emphasis added). Joint Explanatory Statement at 13.

B. Section 251 Rules

1. The Commission should adopt specific national rules, without the inclusion of pricing principles, for implementation of § 251.

As noted above, the MDPU believes that the Commission has the authority to establish specific rules for implementation of § 251 of the Act. In fact we believe in general that it is good policy for the Commission to do so. The adoption of specific national rules implementing § 251 of the Act, without the inclusion of pricing principles, is important primarily for the following reasons cited by the Commission:

- Such rules "would [ ] permit firms to configure their networks in the same manner in every market they seek to enter." NPRM, ¶ 30
- Such rules "can be expected to reduce the capital costs of, and attract investment in, new entrants by enhancing the ability of the investment community to assess an entrant's business plan." NPRM, ¶ 30.
- Such rules "could expedite the implementation of other provisions of the 1996 Act that require incumbent [local exchange carriers ("LECs")], new entrants, the states, federal courts, and the Commission to apply the requirements of section 251 in other contexts." NPRM, ¶ 31.

The Commission has invited parties "to comment, with respect to each of the obligations imposed by section 251, on the extent to which adoption of explicit national rules would be the most constructive approach to furthering Congress' pro-competitive, deregulatory goals of making local telecommunications markets effectively competitive." NPRM, ¶ 35. In general, the MDPU believes that establishment of explicit national rules, without inclusion of pricing principles, would be the most constructive approach for the Commission to take in implementing § 251 of the Act. The following are the MDPU's responses to a number of

particular issues raised in the NPRM.

2. State commissions are not permitted under the Act to impose the Act's incumbent LEC obligations on other carriers.

The Commission has asked for comment on whether state commissions are permitted to impose on carriers that have not been designated as incumbent LECs any of the obligations the Act imposes on incumbent LECs. NPRM, ¶ 45. The MDPU believes that state commissions are not permitted to impose the Act's obligations for incumbent LECs on other carriers. Congress established certain interconnection obligations for all LECs and additional interconnection obligations only for incumbent LECs. See § 251(c) of the Act. If Congress intended for the additional obligations to be imposed on all LECs, it would not have made the distinction in the Act. Accordingly, we believe that imposing such obligations on other carriers would be inconsistent with Congressional intent.

3. The Commission should specify technically feasible points for interconnection and a minimum set of unbundled network elements. Also, the Commission should clarify the range of permissible arguments and the burden of proof.

The Commission should specify points of interconnection and a minimum set of unbundled network elements in its national rules in order to make it more efficient for new entrants to plan and configure their networks. We believe that new entrants are likely to have varying sales and marketing plans for the different regions that they plan to serve, but that they should not be required to develop numerous technical plans and network configurations based on different interconnection points and unbundled network elements in different states. It would be more efficient and more conducive to the development of facilities-based competition

if network interconnection points and unbundled network elements are the same in every market.

The Commission tentatively concluded that the minimum federal standard should specify the following required points of interconnection: trunk- and loop-side of the local switch; transport facilities; tandem facilities; and signal transfer points. NPRM, ¶ 57. The Commission also tentatively concluded that the list of unbundled network elements to which incumbent LECs must provide access should include the following: loop feeder and distribution plant at remote switching or concentration sites; unbundled local switching, local transport, and special access facilities; and unbundled signaling systems and databases. NPRM, ¶¶ 94-116. We agree with these tentative conclusions, but the Commission should clarify (1) that the only reason for an incumbent LEC to reject a point of interconnection or access to an unbundled network element is that it is technically infeasible, and (2) that the burden of proof shall be on the incumbent LEC to demonstrate in arbitration that access to such interconnection point or network element is technically infeasible. NPRM, ¶¶ 58, 87

C. Pricing Principles

Notwithstanding our belief that the Act does not give the Commission the authority to establish pricing principles, and without waiving our right to challenge or disregard such pricing principles, we nevertheless take this opportunity to comment on the substance of parts of the Commission's analysis on pricing issues.

1. The MDPU believes that it is appropriate for states to include universal service costs or subsidies in rates for interconnection, network elements, and reciprocal compensation, on an interim basis, until explicit funding mechanisms are implemented.

The central problem with the pricing of interconnection under the Act is one of timing. The Act clearly requires an economically-efficient, cost-based rate structure for interconnection, unbundled network elements, and reciprocal compensation (collectively, "interconnection"). § 252(d) of the Act. In addition, the universal service portion of the Act requires that universal service support should be explicit, which we take to require that implicit subsidies in the rate structure must be eliminated and replaced with an explicit funding mechanism. § 254(e) of the Act. Therefore, it is clear that we will eventually have an economically efficient retail, wholesale, and interconnection rate structure, with any approved deviations funded through an explicit universal service funding mechanism. The problem, as noted by the Commission, is that "the statutory schedule for completion of the universal service reform proceeding (15 months from the date of enactment of the 1996 Act) is different from that for this proceeding (6 months from the date of enactment of the 1996 Act)."[3] NPRM, ¶ 145. The central question, then, is whether the states may adopt an interim rate structure for interconnection, network elements, and reciprocal compensation that implicitly includes universal service costs or subsidies, until such implicit support is removed from the

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[3] The Commission also noted that intrastate universal service mechanisms will not be affected directly by the § 254 Joint Board proceeding. NPRM, ¶ 145. We disagree. The Act requires that state regulations to preserve and advance universal service may not be inconsistent with the Commission's rules See § 254(f) of the Act.

incumbent's retail rates and replaced with explicit universal service support.

The MDPU believes that it is appropriate for states to include universal service costs or subsidies in rates for interconnection, network elements, and reciprocal compensation, on an interim basis, "pending completion of the section 254 Joint Board proceeding [and] state universal service proceedings." Id. If the Act prohibits states from including such costs or subsidies in rates for interconnection, network elements, and reciprocal compensation prior to the establishment and implementation of new universal service support mechanisms, states may be forced to choose between two undesirable consequences: (1) promote inefficient competition and invite confiscation claims; or (2) allow the incumbent to rebalance its retail rates in advance of new universal service support mechanisms.

Prohibiting states from including universal service costs or subsidies in interconnection rates while such costs and subsidies are included in retail rates would promote inefficient competition. New entrants will be developing their entry strategies on the basis of efficient interconnection rates and the incumbent's inefficient retail rates. Therefore, the entrant may judge that it can be successful in a particular market on the basis of an artificial cost advantage created by the implicit subsidies in the incumbent's retail rates -- subsidies that soon will be eliminated from the rate structure with the adoption of new universal service funding mechanisms. If the state then does not allow the incumbent to rebalance its retail rates in response to this artificial cost advantage, the resulting reduction in revenues from the loss of market share in services providing the implicit subsidies could lead to confiscation claims by the incumbent LEC.

Allowing the incumbent to rebalance its retail rates to respond to competition from firms paying efficient interconnection rates would solve the problem of inefficient competition and confiscation, but it would raise other problems if it is not done coincident with new universal service funding mechanisms. The current rate structure for many, if not all, incumbent LECs provides for implicit subsidization of certain customers (e.g., low-income, high-cost), but implicit subsidies for any of these customers should not be removed until the explicit subsidy mechanism to accomplish the universal service requirements of the Act is established. Otherwise, for example, we could have a situation where the incumbent LEC would geographically-deaverage its retail rates in response to competitors who are paying efficient interconnection rates and are selectively competing for only the low-cost customers who provide the implicit subsidy, only to have those rates reaveraged with the adoption of explicit universal service funding mechanisms.[4] It is inconceivable that the intent of the Act is to create such a "see-saw" effect in rates. Therefore, we believe that states should include the same level of universal service costs or subsidies in interconnection rates that are currently included in retail rates, but only until such implicit subsidies are replaced with an explicit funding mechanism.

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[4] Section 254(b)(3) of the Act requires that "[c]onsumers in ... rural, insular, and high-cost areas should have access to telecommunications and information services ... at rates that are reasonably comparable to rates charged for similar services in urban areas."

2. After establishment of explicit universal service funding mechanisms, interconnection rates should be equal to total-service, long-run incremental cost, plus a portion of joint and common costs distributed on the basis of Ramsey pricing principles.

After implicit universal service subsidies are removed from retail and wholesale rates and replaced with an explicit universal service mechanism, rates for interconnection, network elements, and reciprocal compensation should be set equal to the incumbent LEC's total-service, long-run incremental cost (TSLRIC) of providing the service, plus a portion of joint and common costs distributed on the basis of Ramsey pricing principles. We understand TSLRIC as the difference between the firm's total costs with the service or network element provided and the firm's total costs without the service or network element provided, divided by the total output of the service or network element. We believe that TSLRIC is the appropriate cost standard for setting rates where differential pricing is not used (i.e., where the rate is the same for all similarly situated customers, as it should be for monopoly services or essential facilities), and we recommend that rates for interconnection and unbundled network elements not be differentiated between similarly situated customers.[5] In addition, if it is demonstrated by the incumbent LEC that it has joint and common costs which would not be recovered with TSLRIC pricing, a portion of such costs should be recovered in

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[5] The Commission asked for comment on whether interconnection and unbundled network element rates should be averaged on a geographic or class-of-service basis. NPRM, ¶ 133. The MDPU believes that such averaging is only appropriate where there are no substantial cost differences. If the costs are substantially different, customers are not similarly situated, and TSLRIC should be calculated separately for geographic regions and classes of service. Our recommendation for uniform rates applies only to similarly situated customers.

interconnection, network element, and reciprocal compensation rates based on Ramsey pricing principles.

The MDPU has described Ramsey prices as resulting in the relative demand for each service being the same as it would have been under marginal-cost prices. NYNEX Price Cap, D.P.U. 94-50, at 249, n.144 (1995). We believe that the Commission's suggested approach to allocate common costs according to an inverse relationship to the demand elasticity for each service or network element is a reasonable approach to apply Ramsey pricing principles in the distribution of any joint and common costs. NPRM, ¶ 130.

The Commission noted its concern that Ramsey pricing principles may not be desirable for markets in which competition is developing. NPRM, ¶ 130. We believe that this concern is warranted only if demand elasticities are calculated on the basis of the demand for a particular company's services, in which case competition may cause demand elasticities for a service to vary by customer. If demand elasticities vary by customer due to competition, joint and common costs may be recovered disproportionately by customers, such as residential and low-income, who do not have competitive alternatives. The Commission's concern in this regard would be addressed by calculating demand elasticities on the basis of the total industry demand for the service, which would negate the influence of competition on demand elasticities.

3. Reciprocal compensation rates should be symmetrical based on the incumbent LEC's rate, unless the entrant proves that its costs are higher than the incumbent LEC's rate. Bill and keep should be an option for negotiation, but it should not be mandated.

Reciprocal compensation rates should be symmetrical and based on the incumbent's rate, unless the new entrant proves to the state's satisfaction that its transport and termination costs are higher than the incumbent LEC's rate. It may be more accurate to calculate each carrier's actual costs for transport and termination, but doing so would be a significant administrative burden. In addition, new entrants traditionally have not been subject to the same comprehensive cost accounting rules to which incumbent LECs have been subject, so the new entrant may not have the expertise or ability to calculate its costs for a specific service. If the new entrant is convinced that its costs are higher than the incumbent LEC's rate and believes it can make a convincing showing of its costs, the entrant should have the option of making such a showing to the state commission. The default, however, should be symmetrical rates based on the incumbent LEC's rate.

Carriers should be allowed to negotiate bill and keep arrangements with no limitations. The Commission listed two conditions under which bill and keep arrangements would be efficient: (1) transport and termination costs of both carriers are roughly symmetrical and traffic is roughly balanced; and (2) actual transport and termination costs are so low that there is little difference between a cost-based rate and no rate. NPRM, ¶ 243.[6] We agree with the

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[6] The Commission also noted that, even when there are efficiency losses, bill and keep may be efficient when the efficiency loss is smaller than the administrative cost of termination charges. NPRM, ¶ 241.

Commission about these conditions, but we do not believe that it is appropriate to mandate bill and keep, because, if these conditions prevail, it is in the best interests of both the incumbent LEC and the new entrant to agree to a bill and keep arrangement.[7] If one or the other does not agree to this arrangement, then that carrier must believe that one or both of the above conditions are not present. If both of the above conditions are present, we do not believe that the incumbent LEC or new entrant would gain a significant competitive advantage by not agreeing to bill and keep.

4. The calculation of avoided costs should be a uniform discount percentage of retail costs, net of wholesale costs. There should be no allocation of general overhead or joint and common costs as avoided retail costs.

The Commission asks whether avoided costs should be calculated for specific services or calculated as a uniform discount percentage for all services. NPRM, ¶ 182. While it may be more accurate to calculate avoided costs for each service, since such costs likely would vary somewhat by service, doing so would be such an administrative burden that the costs would outweigh the benefits. Therefore, the MDPU believes that avoided costs should be calculated as a uniform percentage discount for all retail services. The uniform percentage discount should be calculated on the basis of retail avoided costs, net of expenses incurred in the provision of wholesale services. See NPRM, ¶ 180.

The discount for wholesale rates should not include an allocation of general overhead

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[7] We do not agree with contentions that states may not mandate bill and keep arrangements (see NPRM, ¶ 243), because the Act specifically notes that bill and keep arrangements are consistent with the Act's § 252(d)(2) pricing standard for transport and termination.

since, by definition, such costs are not avoided when a service is provided at wholesale. See NPRM, ¶ 180. If a portion of general overhead costs is avoided when a service is provided at wholesale, then referring to such costs as "overhead" is a misnomer: such costs should properly be included in the calculation of avoided retail costs. In addition, avoided costs should not include the portion of joint and common costs allocated to the retail service on the basis of Ramsey pricing principles (see Section II.C.2, supra) The joint and common costs efficiently allocated to a service must be recovered whether the service is provided on a retail or wholesale basis. Otherwise, an arbitrage opportunity is created for the customer to bypass the efficient recovery of joint and common costs, simply by purchasing the service from a wholesaler.

5. State commissions may prohibit resellers from reselling a subsidized service to another category of subscribers and may prohibit resellers from reselling a flat-rate service to more than one end-user. In addition, the resale obligation should not extend to customer-specific contract rates.

The Commission seeks comment on the meaning of the language in the Act that "a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." NPRM, ¶ 176, citing § 251(c)(4)(B) of the Act. The MDPU believes that this language grants states the authority to prohibit two forms of resale: (1) resale to another set of subscribers of a service that is offered at a subsidy only to one set of subscribers; and (2) resale to more than one subscriber of a flat-rated service, such as a flat-rate residence line (1FR).

Also, we believe that it would not be appropriate or beneficial to require resale of customer-specific contract rates. In Massachusetts, common carriers are authorized to negotiate customer-specific tariffs to respond to competitive bids. Requiring that these contracted rates be offered for resale at a wholesale discount would undermine carriers' abilities to bid effectively on these contracts.

III. CONCLUSION

The MDPU commends the Commission's concerted efforts to carry out its significant burdens in implementing certain aspects of the Act, including this NPRM. As noted by the Commission, Massachusetts is one of seven states that currently have competing firms offering switched local service (see NPRM, n.10), and the MDPU is committed to the continued development of open markets in telecommunications, relying on competitive forces wherever possible, in order that the benefits associated with competition will be realized by all telecommunications customers in the Commonwealth. See D.P.U. 94-185, Local Competition at 1 (Order Opening Investigation, January 6, 1995). Therefore, given our share commitment to implementing the pro-competitive requirements of the Act, we respectfully request that the Commission carefully consider and incorporate our positions, as outlined in these initial comments.

Respectfully submitted,

The Commonwealth of Massachusetts
Department of Public Utilities

By:

John B. Howe

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